U. S. Senate
Republican Policy Committee

Larry E. Craig, Chairman Jade West, Staff Director

Legislative Notice

No. 46 July 9, 2002

S. J. Res. 34 – Approval of Yucca Mountain Site

Calendar No. 412

Reported from the Committee on Energy and Natural Resources on June 10, 2002, by a vote of 13-10, without amendment; S. Rept. 107-159.

NOTEWORTHY

- S.J. Res. 34 approves the site at Yucca Mountain, Nevada, for development of a high-level radioactive waste and spent nuclear fuel repository, and thus overrides the Nevada Governor's veto of the President's decision to proceed with siting of the facility at Yucca Mountain.

- Failure to approve the resolution within the 90-day period prescribed by the 1982 Nuclear Waste Policy Act (NWPA) (that is, by July 27, 2002) ends further consideration of Yucca Mountain as the repository site with no alternatives immediately available, and exposes the Federal Government to further financial liability for its failure to begin accepting waste for disposal. Timely approval of the resolution permits the Secretary of Energy to proceed with the filing of a permit application to the Nuclear Regulatory Commission to construct and operate the site.

- Under the terms of the NWPA, the motion to proceed to the approval resolution is highly privileged, may be made by any Senator, and is not debatable. If the motion to proceed is agreed to, debate is limited to 10 hours, equally divided. At the conclusion of debate the text of H.J. Res. 87 is automatically substituted, followed by a mandatory quorum call, followed by a vote on final passage without any intervening action. The resolution is not amendable.

- H.J. Res. 87 is an identical resolution which was strongly supported by the White House, and was passed the House of Representatives by a vote of 306-117 on May 8, 2002.

HIGHLIGHTS

- For more than half a century, the Federal Government has sought a site for the permanent storage of spent nuclear fuel and high-level radioactive waste from both federal and private-sector sources. On February 15, 2002, President Bush recommended that Yucca Mountain in Nevada serve as that site.

- The Nuclear Waste Policy Act of 1982 (as amended in 1987), allows the governor of the state in which the recommended site is located to veto the President's recommendation. If that veto occurs, the law then provides for Congress to vote on whether the governor's veto will stand or whether the President's recommendation will prevail.

- On April 8, 2002, Nevada Governor Kenny Guinn did veto the President's recommendation. If that veto stands, the Yucca Mountain program halts immediately. The law does not provide for a next step.

- On May 8, 2002, the House of Representatives overwhelmingly rejected Governor Guinn's veto and supported the President's recommendation by a vote of 306 to 117 after only two hours of debate (H.J. Res. 87, H. Rept. 107-525).

- On June 5, the Senate Energy and Natural Resources Committee ordered reported its bill (S.J. Res. 34) by a vote of 13-10, clearing the way for a vote by the full Senate by the statutory deadline.

- If a vote in the Senate does not occur by the statutory deadline (or if the joint resolution does not pass), then Governor Guinn's veto stands. Presumably Congress would have to act to begin investigations at another site. In the meantime, 45,000 metric tons of spent fuel from commercial nuclear reactors, 2,500 metric tons of spent fuel from military research and production reactors, and more than 100 million gallons of high-level radioactive defense waste will remain where it is – stored at 131 sites in 39 states. Each year thereafter, 2,000 tons of materials will be added to the total. In the meantime, the $4 billion spent on Yucca Mountain to date will have been wasted.

Expedited Procedures

According to the Congressional Research Service, "The purpose of an expedited procedure is to facilitate the ability of Congress to dispose of the matter specified in a timely and definitive way. To this end, it establishes means for Congress to take up, and complete action on, the resolution of approval or disapproval within a limited period of time. For this reason, expedited procedures are also known as 'fast track' procedures. They often include provisions for automatic introduction of the resolution, fixed time periods for committee and floor action, automatic or privileged discharge of committees if they do not report, automatic or privileged floor consideration, prohibitions on amendment, and automatic or expedited final action to send a measure to the President."

When Congress passed the Nuclear Waste Policy Act, it expressed concern with the growing amount of spent nuclear fuel stored around the country and the potential environmental consequences of leaving it in so many places. Congress was concerned enough to bind itself to an expedited set of procedures for the critical purpose of ensuring that a decision on the storage site be made. The expedited procedures have resulted in a deadline for the Senate: it must vote on the joint resolution by the statutory deadline. If the Senate agrees with the President and the House and passes the resolution, Governor Guinn's veto is rejected and the Department of Energy (DOE) can proceed to the next step in the process - applying for a Nuclear Regulatory Commission license to construct and operate the site.

The expedited procedures provided by the Nuclear Waste Policy Act provide that a motion to proceed to consideration of a joint resolution of disapproval shall be:

– In order at any time, by any Senator;

– Highly privileged; and

– Not subject to debate.

Consideration of the joint resolution shall:

– Allow a maximum 10 hours of debate equally divided;

– Not allow a motion to recommit;

– Allow appeals of rulings by the Chair to be decided without debate;

– Provide that after the expiration or yielding back of time, there will be a single quorum call and vote on final passage; and

– Not allow for a motion to reconsider.

BACKGROUND

Nuclear Power and Nuclear Waste

Nearly 75 percent of the nation's electricity is generated by coal-fired and nuclear power plants. The United States depends on coal for nearly 55 percent of its electricity, on hydro for about 10 percent, and on commercial nuclear reactors for 20 percent. Virtually all of that nuclear power is base- load generating capacity – that is, it is running 24 hours a day, 7 days a week.

Nuclear reactors were designed with on-site storage pools that were intended to serve as temporary storage. A typical nuclear power plant produces about 30 metric tons of spent fuel annually. The nation's nuclear power plants have generated about 45,000 metric tons of waste and continue to generate approximately 2,000 tons each year.

For more than half a century, the Federal Government has sought a site for the permanent storage of spent nuclear fuel and high-level radioactive waste from both federal and private-sector sources. On February 15, 2002, President Bush recommended that Yucca Mountain in Nevada serve as that site.

The 1982 Law

The 1982 Nuclear Waste Policy Act (NWPA) required the Department of Energy (DOE) to design and implement a permanent geologic repository for spent nuclear fuel from commercial reactors, but specified no site. It was given a deadline to begin accepting waste by 1998. The law also called for developing plans by 1985 to build "monitored, retrievable storage" facilities as a possible alternative to permanent underground geologic storage. (In 1985, the President determined that defense-related spent fuel could also be disposed of in the same repository.)

To pay for constructing and operating a permanent facility, the law established the Nuclear Waste Fund in the U.S. Treasury. It currently receives about $630 million per year from collections of a fee paid by ratepayers of nuclear-generated electricity. The fund currently contains almost $13 billion in tax and interest. In addition, defense funds are annually appropriated to cover the cost of storing defense spent fuel and waste.

The 1987 Law

In 1987, Congress passed the Nuclear Waste Policy Amendments Act, instructing the Energy Department to study the suitability of the Yucca Mountain site to serve as the permanent repository. That site was one of several DOE had previously identified. The 1987 law authorized DOE to move forward with so-called "site characterization" activities to evaluate the suitability of the site to serve as a repository. The law also authorized a monitored retrievable storage facility, contingent upon the permanent repository being sited and licensed.

Nevada's Response

The State of Nevada subsequently took the issue to court, asserting the state's authority to prevent the Energy Department from proceeding with site characterization activities. Although the state of Nevada lost in a case decided by the Supreme Court, the state succeeded in delaying site characterization activities for several years. Since enactment of the 1987 law, the federal government has spent approximately $4 billion in characterizing the Yucca Mountain site.

Litigation

The Department of Energy in 1994 admitted that it would be unable to meet the 1998 deadline for beginning to accept nuclear waste, as required by the NWPA. As a result, a lawsuit was filed by a group of

state regulatory agencies, nuclear utilities and state Attorneys General against DOE for breaching the contracts entered into under the 1982 NWPA (*Indiana Michigan Power Company, et al. v. U.S. Dept. of Energy)*. On July 23, 1996, the U.S. Court of Appeals for the District of Columbia decided the case, holding that DOE has an obligation to begin accepting spent nuclear fuel from civilian reactors by January 1998. After DOE subsequently acknowledged that it would be unable to meet this deadline, a second lawsuit was filed by a group of 46 state regulatory agencies and 33 utilities, asking the Court to suspend collection of the nuclear waste fee and order DOE to develop a program to take used nuclear fuel in 1998 (*State of Michigan, et al. v. U.S. Dept. of Energy*).

After the President Signs the Yucca Mountain Resolution

Congressional approval of the President's recommendation to move forward with the Yucca Mountain site **does not mean that nuclear materials will be moved to the facility**. Instead, Congressional approval means only that DOE then can begin the application process to the Nuclear Regulatory Commission for a license to construct and operate Yucca Mountain. DOE expects to file such an application by late 2004. If the license application – which will take several years – is approved, only then will construction commence. Shipments of material could begin as early as 2010.

BILL PROVISIONS

The official title of S.J. Res. 34 is: "A joint resolution approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982." The text of the resolution reads in its entirety:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That there hereby is approved the site at Yucca Mountain, Nevada, for a repository, with respect to which a notice of disapproval was submitted by the Governor of the State of Nevada on April 8, 2002.

ADMINISTRATION POSITION

No Statement of Administration position on S.J. Res. 34 was available at press time. However, the Administration strongly supported passage of the identical House resolution, H.J. Res. 87. On May 8, 2002, it issued this statement of support:

The Administration strongly supports enactment of H.J. Res. 87, which approves the Yucca Mountain, Nevada, site as the scientifically-deemed safe location for the Nation's permanent repository for high-level radioactive waste and spent nuclear fuel. The development of a nuclear waste repository is critical for a number of important national interests including energy security, homeland security, and protection of the environment. Right now nuclear materials are accumulating at 131 sites in 39 States, and these temporary storage facilities are running out of room. It was never the intent that these temporary storage arrangements become permanent nuclear waste repositories. The Administration commends the House for its prompt, bipartisan action on this important legislation.

The suitability of the Yucca Mountain site is based on a vast body of scientific evidence developed over the past 24 years at a cost of over $4 billion; and the enactment of H.J. Res. 87 will allow the required licensing process to move forward. Under that process, the Nuclear Regulatory Commission (NRC) will grant a license for the construction of the repository only if the Department of Energy demonstrates that, in compliance with NRC regulations, the material can be received, possessed, and disposed of without unreasonable risk to public health and safety. The NRC regulations include stringent public health and environmental standards developed by the Environmental Protection Agency. It is the Administration's expectation that the Yucca Mountain site will meet the NRC's stringent criteria and be licensed as the Nation's permanent nuclear waste repository. Such action will ensure a permanent, safe, and secure site for the disposal of spent nuclear fuel, which will allow the Nation to continue to receive the benefits of nuclear power – an energy source that currently provides 20 percent of the Nation's electricity and emits no greenhouse gases.

On April 9, 2002, Energy Secretary Abraham wrote a letter to the President of the Senate, requesting prompt and favorable action of the resolution by the Senate. That letter reads in part:

. . .The President's recommendation and the supporting Department of Energy materials accompanying it reflect over two decades of publicly available and transparent scientific examination of this site. That examination, conducted over 24 years at a cost of more than $4 billion, occurred with benchmark analyses by the National Academy of Sciences and with a view to compliance with extremely rigorous Environmental Protection Agency standards. The overwhelming weight of scientific evidence has now confirmed the suitability of the site, and thereby has confirmed the choice made by Congress 15 years ago, in 1987, that the Government direct its scientific inquiry exclusively to the Yucca Mountain site.

In addition to the sound science that supports this project – a prerequisite for moving forward – fundamental national security and energy policy considerations weigh heavily in favor of proceeding with the Yucca Mountain program. Spent fuel from our nuclear-powered aircraft carriers and submarines must be permanently disposed of if we are to continue using their special capabilities.

The project is critical for energy security as well. Nuclear power provides 20 percent of the nation's electricity and emits no airborne pollution or greenhouse gases. The reactors we have today give us

one of the cheapest and most reliable forms of power generation we have. Securing the benefits of this form of energy requires finding a permanent, safe and secure site for disposal of spent nuclear fuel.

Yucca Mountain is essential for homeland security. More than 161 million people live within 75 miles of one or more nuclear waste sites, all of which were intended to be temporary. We believe that today these sites are safe, but prudence demands we consolidate this waste from widely dispersed above-ground sites into a deep underground location that can be better protected.

Twenty years ago Congress established that safe disposal of spent nuclear fuel and high-level nuclear waste is a responsibility of the Federal Government. The next step toward fulfilling this responsibility to the future is to permit the Yucca Mountain site to be designated, as the Nuclear Waste Policy Act contemplates, so that its actual safety as a site for a particular repository can be evaluated by the independent and neutral experts at the Nuclear Regulatory Commission.

I urge the Congress to act promptly and favorably on the proposed joint resolution so that the next stage of addressing the merits of all remaining issues, by applying the independent expertise of the Nuclear Regulatory Commission, can begin in earnest.

COST

The Congressional Budget Office, on June 5, 2002, estimated that implementing S. J. Res. 34 would require the appropriation of about $12 billion from the Nuclear Waste Fund over the period 2003 to 2012 to pay for licensing, construction, and waste transportation activities over that period. CBO also notes that the cost estimate for the Senate Resolution is the same for the House Resolution.

OTHER VIEWS

The Nevada Congressional Delegation unanimously opposes further consideration of the site at Yucca Mountain for the siting of a nuclear waste repository. Nevada's Governor has raised concerns about the geologic integrity of the site, the design of the repository, the credibility of DOE's performance assessments, and the safety of nuclear waste transportation. The Senate Energy and Natural Resources Committee believes the Governor's questions must be more fully examined before the NRC can issue a permit to construct and operate the site. The Committee report notes: "But they should be resolved by the Commission, rather than by the Committee or the Senate as a whole. We cannot find on the basis of the

record before us that any of the objections raised by the Governor warrants termination of the repository program at this point."

POSSIBLE AMENDMENTS

The resolution is not amendable. Under the expedited procedures, the resolution is limited to 10 hours of debate on the resolution of approval, followed by substitution of the House resolution, a mandatory quorum call, and vote on final passage.

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